

IN UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TOM MACKENZIE,

Plaintiff,

vs.

USAA CASUALTY INSURANCE COMPANY,

Defendant.

CASE NO. 2:24-cv-00298-BJR

**PROTECTIVE ORDER**

**1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production by Defendant USAA Casualty Insurance Company (“USAA CIC”) of information USAA CIC considers to be of confidential, proprietary, or trade secret (hereinafter referred to collectively as “confidential information”) and for which USAA CIC is requesting protection consistent with LCR 26(c). The parties acknowledge this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

Accordingly, plaintiff Tom Mackenzie and defendant USAA CIC are bound to the following terms of the protective order:

## 2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

1. Defendant’s internal claims-handling policies, procedures and/or guidelines, inclusive of bonus/incentive programs, litigations handling documents, anything other similarly sensitive material from December 2021 to present;

2. Defendant’s internal claims-handling training materials inclusive of “Knowledge Delivery” and “Knowledge Central” articles (“KDs” and “KCs” respectively).

3. The employment records of certain USAA CIC employees requested in Plaintiff’s Request for Production No. 8, which includes:

- a. Special Achievement memos;
- b. Letters, memos, and emails of congratulation;
- c. Letters, memos, and emails of criticism;
- d. Performance and counseling memos;

4. Documents which Defendant otherwise determines contains confidential, proprietary, trade secret information which should be protected as and not publicly disclosed.

5. Testimony regarding documents or information designated as “confidential” within discovery.

## 3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,

1 conversations, or presentations by parties or their counsel that might reveal confidential material.  
 2 However, the protections conferred by this agreement do not cover information that is in the  
 3 public domain or becomes part of the public domain through trial or otherwise.

#### 4 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

5 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
 6 or produced by another party or by a non-party in connection with this case only for prosecuting,  
 7 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
 8 the categories of persons and under the conditions described in this agreement. Confidential  
 9 material must be stored and maintained by a receiving party at a location and in a secure manner  
 10 that ensures that access is limited to the persons authorized under this agreement.

12 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
 13 by the court or permitted in writing by the designating party, a receiving party may disclose any  
 14 confidential material only to:

15 (a) the receiving party's counsel of record in this action, as well as employees  
 16 of counsel to whom it is reasonably necessary to disclose the information in this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the  
 18 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
 19 agree that a particularly document or material produced is for Attorney's Eyes Only and is so  
 20 designated:  
 21

22 (c) experts and consultants to whom disclosure is reasonably necessary for this  
 23 litigation and who have signed the "Acknowledgment and Agreement to be Bound" (Exhibit A);

24 (d) the court, court personnel, and court reporters and their staff;

25 (e) copy or imaging services retained by counsel to assist in the duplication of  
 26 confidential material, provided that counsel for the party retaining the copy or imaging service  
 27

28 instructs the service not to disclose any confidential material to third parties and to immediately

1 return all originals and copies of any confidential material;

2 (f) during their depositions, witnesses in the action to whom disclosure is  
3 reasonably necessary and who have signed the “Acknowledgement and Agreement to be Bound”  
4 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
5 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
6 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
7 under this agreement;

8 (g) the author or recipient of a document containing the information or a  
9 custodian or other person who otherwise possessed or knew the information.  
10

11 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
12 referencing such material in court filings, the filing party shall confer with the designating party,  
13 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
14 remove the confidential designation, whether the document can be redacted, or whether a motion  
15 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
16 designating party must identify the basis for sealing the specific confidential information at issue,  
17 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
18 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
19 the standards that will be applied when a party seeks permission from the court to file material  
20 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
21 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
22 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance  
23 with the strong presumption of public access to the Court’s files.  
24  
25

## 26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
28 or non-party that designates information or items for protection under this agreement must take

1 care to limit any such designation to specific material that qualifies under the appropriate  
2 standards. The designating party must designate for protection only those parts of material,  
3 documents, items, or oral or written communications that qualify, so that other portions of the  
4 material, documents, items, or communications for which protection is not warranted are not  
5 swept unjustifiably within the ambit of this agreement.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
7 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
8 unnecessarily encumber or delay the case development process or to impose unnecessary  
9 expenses and burdens on other parties) expose the designating party to sanctions.

10 If it comes to a designating party's attention that information or items that it designated  
11 for protection do not qualify for protection, the designating party must promptly notify all other  
12 parties that it is withdrawing the mistaken designation.

13  
14 5.2 Manner and Timing of Designations: Except as otherwise provided in this  
15 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or  
16 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
17 be clearly so designated before or when the material is disclosed or produced.

18  
19 (a) Information in documentary form: (*e.g.* paper or electronic documents and  
20 depositions exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
21 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
22 confidential material. If only a portion or portions of the material on a page qualifies for  
23 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making  
24 appropriate markings in the margins).

25  
26 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
27 and any participating non-parties must identify on the record, during the deposition or other  
28 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other

1 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
 2 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
 3 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential  
 4 information at trial, the issue should be addressed during the pre-trial conference.

5 (c) Other tangible items: the producing party must affix in a prominent place  
 6 on the exterior of the container or containers in which the information or item is stored the word  
 7 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
 8 the producing party, to the extent practicable, shall identify the protected portion(s).  
 9

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 11 designate qualified information or items does not, standing alone, waive the designating party’s  
 12 right to secure protection under this agreement for such material. Upon timely correction of a  
 13 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
 14 in accordance with the provisions of this agreement.

## 15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 17 confidentiality at any time. Unless a promptly challenge to a designating party’s confidentiality  
 18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 19 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 20 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 21 original designation is disclosed.  
 22

23 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
 24 regarding confidential designations without court involvement. Any motion regarding  
 25 confidential designations or for a protective order must include a certification, in the motion or in  
 26 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference  
 27 with other affected parties in an effort to resolve the dispute without court action. The certification  
 28

1 must list the date, manner, and participants to the conference. A good faith effort to confer requires  
2 a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
4 intervention, the designating party may file and serve a motion to retain confidentiality under  
5 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
7 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
8 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
9 the material in question as confidential until the court rules on the challenge.  
10

## 11 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED** 12 **IN OTHER LITIGATION**

13 If a party is served with a subpoena or a court order issued in other litigation that compels  
14 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party  
15 must:

16 (a) promptly notify the designating party in writing and include a copy of the  
17 subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to  
19 issue in the other litigation that some or all of the material covered by the subpoena or order is  
20 subject to this agreement. Such notification shall include a copy of this agreement; and  
21

22 (c) cooperate with respect to all reasonable procedures sought to be pursued  
23 by the designating party whose confidential material may be affected.

## 24 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
26 material to any person or in any circumstance not authorized under this agreement, the receiving  
27 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
28

1 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
2 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
3 and (d) request that such person or persons execute the “Acknowledgement and Agreement to Be  
4 Bound” that is attached hereto as Exhibit A.

5  
6 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
7 **PROTECTED MATERIAL**

8 When a producing party gives notice to receiving parties that certain inadvertently  
9 produced material is subject to a claim of privilege or other protection, the obligations of the  
10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
11 is not intended to modify whatever procedure may be established in an e-discovery order or  
12 agreement that provides for production without prior privilege review. The parties agree to the  
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.  
14

15 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

16 Within 60 days after the termination of this action, including all appeals, each receiving  
17 party must return all confidential material to the producing party, including all copies, extracts  
18 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
19 destruction.  
20


21 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
22 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
23 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
24 work product, even if such materials contain confidential material.

25 The confidentiality obligations imposed by this agreement shall remain in effect until a  
26 initiating party agrees otherwise in writing or a court orders otherwise.  
27  
28



1 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
2 any documents, electronically stored information (ESI) or information, whether inadvertent or  
3 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal  
4 or state proceeding, constitute a waiver by the producing party of any privilege applicable to  
5 those documents, including the attorney-client privilege, attorney work-product protection, or  
6 any other privilege or protection recognized by law. This Order shall be interpreted to provide  
7 the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid.  
8 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's  
9 right to conduct a review of documents, ESI or information (including metadata) for relevance,  
10 responsiveness and/or segregation of privileged and/or protected information before production.  
11 Information produced in discovery that is protected as privileged or work product shall be  
12 immediately returned to the producing party.  
13

14 DATED this 9th day of October, 2024.

15  
16 

17 \_\_\_\_\_  
18 Barbara Jacobs Rothstein  
19 U.S. District Court Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
\_\_\_\_\_[print or type full address], declare under penalty of perjury that I  
have read in its entirety and understand the Stipulated Protective Order that was issued by the  
United States District Court for the Western District of Washington on [date] in the case of  
\_\_\_\_\_ **[insert formal name of the case and the number and initials assigned to  
it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could expose me  
to sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
disclose in any manner any information or item that is subject to this Stipulated Protective Order  
to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: